Supreme Court, U.S.
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No. 92-490

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

STATE OF ARIZONA,

Petitioner,

v.

FLOYD ORVILLE PETERSON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE ARIZONA COURT OF APPEALS

BRIEF OF AMICUS CURIAE, ARIZONA LODGE OF THE FRATERNAL ORDER OF POLICE, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does the "good faith" exception to the exclusionary rule permit the introduction of evidence seized through an invalid arrest warrant not known to be invalid by the arresting officer at the time of the arrest and seizure?

Do the conflicting decisions on this issue among state courts of last resort and the United States courts of appeals require this Court's exercise of its jurisdiction?

Do the conflicting decisions on this issue among various state courts of last resort require this Court's exercise of its jurisdiction?

Do the divergent interpretations placed on this Court's decision in *United States v. Leon*, 468 U.S. 897 (1984), by the state and federal courts require this Court's exercise of its jurisdiction?

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Amicus Curiae, Arizona Lodge of the Fraternal Order of Police, respectfully requests this Court grant the Petition for Writ of Certiorari filed by the State of Arizona.

INTEREST OF AMICUS CURIAE

The *Amicus Curiae*, Arizona Lodge of the Fraternal Order of Police, is a fraternal and benevolent association established, among other reasons, to assist and encourage at the national, state and municipal levels, the improvement of police methods, enhancement of the administration of justice and the enforcement of the law.

The Arizona Lodge of the Fraternal Order of Police has more than 6,500 members, each of whom is a law enforcement officer certified by the State of Arizona or the United States to perform law enforcement functions within the State of Arizona, for the State, or its political sub-divisions.

The Arizona Lodge of the Fraternal Order of Police is profoundly interested in and concerned with the issues presented by this case. This Court's disposition of the case will dictate the manner in which all law enforcement officers throughout the United States make arrests of suspects pursuant to warrants which police officers are informed and have reason to believe, are valid and outstanding.

SUMMARY OF ARGUMENT

Special and important reasons exist which justify this Court exercising its discretion and accepting jurisdiction to review this case:

1. The various decisions of state courts of last resort conflict with one another and with those of United States courts of appeals which have considered the issue herein; and,

2. A question exists whether the state courts and United States courts of appeals have properly interpreted, applied and extended this Court's decision in *United States v. Leon*, 468 U.S. 897 (1984).

ARGUMENT

SPECIAL AND IMPORTANT REASONS EXIST WHICH JUSTIFY THIS COURT EXERCISING ITS DISCRETION TO REVIEW THIS CASE

United States Supreme Court Rule 17.1 provides that this Court may exercise its discretion to review a matter only when there are "special and important reasons therefore". Pursuant to Rule 17, such "special and important reasons" may be found

> When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

In the instant case, the single substantive issue is whether the "good faith" exception to the exclusionary rule articulated in *United States v. Leon*, 468 U.S. 897 (1984), permits the introduction of evidence obtained through an arrest warrant not known to be invalid by the arresting officers at the time of the arrest and seizure. *Amicus Curiae's* review of the cases reveals that this same issue has come before **at least two United States courts of**

appeal: *United States v. Towne*, 870 F.2d 880 (2d Cir. 1989), (Defendant arrested on warrant improperly kept in police department active files; contraband seized; evidence not suppressed.); *United States v. Stevens*, 509 F.2d 683 (8th Cir.), cert. denied, 421 U.S. 989 (1975), (Defendant's vehicle stopped. A warrants check erroneously revealed that the vehicle was wanted in connection with a burglary. A limited "frisk" of the vehicle's occupants resulted in the seizure of weapons. Evidence not suppressed.); **at least three (3) State courts of last resort**: *State of Arizona v. Peterson*, ___ Ariz.___, 830 P.2d 856 (App. 1991), petition for review denied by the Arizona Supreme Court, June 16, 1992; *Ott v. State*, 325 Md. 206, 600 A.2d 111 (Md. 1992) petition for certiorari filed (March 17, 1992), (Defendant's vehicle stopped. Warrant check erroneously discloses an arrest warrant. Contraband seized. Evidence suppressed.); *Childress v. United States*, 381 A.2d 614 (D.C. 1977), (Defendant arrested on erroneous radio reports of four outstanding traffic warrants. Contraband seized during search. Evidence not suppressed.); *Patterson v. United States*, 301 A.2d 67 (D.C. 1973), (Defendant arrested on erroneous radio dispatcher's report that Defendant's vehicle was stolen. Illegal weapons seized. Evidence not suppressed.); **and numerous intermediate appellate courts**: *McCray v. State*, 496 S.2d 919 (Fl. App. 1986), (Defendant arrested on capias which had been mistakenly issued and which had been disposed of in an earlier proceeding. Contraband seized during search. Evidence not suppressed.); *Commonwealth v. Riley*, 284 Pa.Super. 280, 425 A.2d 813 (1981), (Defendant arrested on erroneous records check showing outstanding arrest warrant and juvenile detainer. While in custody, witnesses identified Defendant as suspect in an unrelated robbery. Conviction on robbery affirmed.); *People v. McElhaney*, 146 Misc.2d 748, 552 NYS.2d 825 (1990), (Defendant arrested on erroneous computer generated police report which showed Defendant's automobile to be stolen. Arrest held invalid.); *People v. Ivey*, 228 Cal.App.3rd 1423, 279 Cal.Rptr. 554 (lst Dist. 1991), (Defendant arrested on erroneous police record showing outstanding warrant. Contraband seized. Evidence suppressed.); *State v. Gifford*, 558 So.2d 444 (Fl. App. 1990), (Defendant arrested on erroneous records check showing an outstanding

warrant. Arrest held invalid.); *People v. Mourecek*, 208 Ill.App.3d 87, 566 N.E.2d 841 (2d Dist. 1991), (Defendant arrested on erroneous information concerning outstanding traffic warrant. Where officer had other sufficient probable cause to justify a arrest, evidence seized would not be suppressed.); *Commonwealth v. Millings*, 317 Pa. Super. 235, 463 A.2d 1172 (1983), (Defendant arrested on withdrawn warrant. Contraband seized. Contraband suppressed.); *State v. Trenidad*, 23 Wash. App. 418, 595 P.2d 957 (1979), (Defendant arrested on warrant which had been quashed. Drug paraphernalia seized. Evidence suppressed.); *People v. Joseph*, 128 Ill. App.3d 668, 470 N.E.2d 1303 (1984), (Defendant arrested on erroneous computer information that Defendant was wanted on a bond forfeiture warrant for possession of a controlled substance. Contraband seized. Evidence suppressed.); and, *State v. Cross*, 164 N.J. Super. 368, 396 A.2d 304 (1978), (Defendants arrest based on erroneous radio report that vehicle was stolen. Contraband seized. Evidence not suppressed.).

There is, however, significant disagreement among the state and federal courts on the proper disposition of the issue.

A. ***The decisions of state courts of last resort conflict with one another and with decisions of the United States courts of appeals which have considered the issue.***

The general pattern which emerges from these cases is as follows: A law enforcement officer stops a vehicle or has reason to suspect an individual of criminal wrongdoing. The officer runs a computer check to determine whether the suspect is wanted on an outstanding warrant or to determine whether the automobile is stolen. The computer check discloses an outstanding warrant or that the automobile is stolen. Based upon this information, the officer arrests the suspect and performs a search incident thereto. During the search the officer discovers evidence of other criminal misconduct. After the seizure of the contraband the officer is

informed that the arrest warrant or information given him from the computer is no longer valid.

Under these or similar facts the United States Court of Appeals for the Second Circuit, the United States Court of Appeals for the Eighth Circuit, and the District of Columbia Court of Appeals, have affirmed the trial court's refusal to suppress the seized evidence.[1]

In contrast, the courts of last resort for Arizona and Maryland, under similar facts, have reversed the lower courts' decisions and suppressed the seized evidence.[2]

Because there is a clear conflict among the courts of last resort concerning this Court's exclusionary rule and the exceptions created thereto, it is appropriate for this Court to exercise its discretion and grant the Petition for Writ of Certiorari.

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[1] The basis of these Courts' decisions was that since it was objectively reasonable for the officer to rely on the information provided to him in arresting the defendant, the policy of discouraging police misconduct would not be advanced by suppressing evidence developed by the officer. *See United States v. Towne*, 870 F.2d 880, 885 (2d Cir. 1989); *United States v. Stevens*, 509 F.2d 683, 687 (8th Cir. 1975); *Childress v. United States*, 381 A.2d 614, 616 (D.C. 1977); *Patterson v. United States*, 301 A.2d 67, 69 (D.C. App. 1973).

[2] The basis of the Court's decision in *Ott v. State*, 325 Md. 206, 600 A.2d 111, 116(1992), appears to have been that the police may not rely upon incorrect information when they are at fault in permitting the records to remain uncorrected. In *State of Arizona v. Peterson*, ____ Ariz. ____, 830 P.2d 856 (1991), the Court attempted to distinguish the facts in *United States v. Leon*. The Arizona Court reasoned that the exception to the exclusionary rule carved out in *United States v. Leon* applies only where the underlying warrant is invalidated because of judicial error, e.g., the magistrate's finding of probable cause is later found to be erroneous. In *Peterson*, the court concluded that the holding in *United States v. Leon* would not apply in cases where a warrant was properly issued but due to "police misconduct" a warrant, which was previously quashed or cancelled, was improperly maintained on a police computer or in a police warrants drawer.

B. ***A question exists whether the state courts and United States courts of appeals have properly interpreted, applied and extended this Court's decision in United States v. Leon.***

In *United States v. Leon*, 468 U.S. 897 (1984) this Court held that the exclusionary rule does not apply where the government establishes that a police officer exhibited "objectively reasonable" reliance on a magistrate's determination of probable cause and on a technical sufficiency of the search warrant issued. *Id.* at 922. As a result, this Court held that evidence seized pursuant to a warrant need not be suppressed even though the magistrate's finding of probable cause was later found to be erroneous. *Id.* In so doing, this Court reasoned that deterrence of police misconduct would not be furthered under those circumstances. This Court therefore stated that the exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity". *Id.* at 918-919.

The facts of the instant case vary somewhat from those in *United States v. Leon*. The instant case involves a situation where a warrant was properly issued by a magistrate and relied upon by a law enforcement officer, who, due to computer error or the error of *another* police agency, mistakenly believed the warrant was still valid. Under similar facts, the United States Court of Appeals for the Second Circuit in *United States v. Towne*, 870 F.2d 880, 885 (2d Cir. 1989) extended this Court's holding in *Leon* and admitted the evidence seized incident to the arrest. In contrast, the Arizona and Maryland courts of last resort refused to extend the *Leon* holding. *See Ott v. State*, 325 Md. 206, 600 A.2d 111 (1992); *State v. Peterson*, ___ Ariz. ___, 830 P.2d, 856 (App. 1991).

Because of the divergent interpretations placed on this Court's decision in *United States v. Leon*, by the state and federal courts, this Court should exercise its discretion and grant the Petition for Writ of Certiorari.

CONCLUSION

Special and important reasons exist which justify this Court exercising its discretion and accepting jurisdiction to review this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned member of this Bar certifies that in compliance with United States Supreme Court Rules 36.5 and 28, (3) copies of the foregoing brief of *amicus curiae* were served upon each of the parties in this case by depositing the same in a United States Post Office or mailbox, with first class postage prepaid, addressed to their counsel of record at the below addresses:

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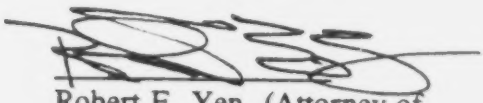

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